

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 880

Introduced by Rogert, 16; Stuthman, 22.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1213, 28-1239.01, 28-1241, 28-1244, 28-1246, 28-1247,
3 28-1249, and 28-1250, Reissue Revised Statutes of
4 Nebraska; to change provisions relating to fireworks;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1213, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1213 For purposes of sections 28-1213 to 28-1239,
4 unless the context otherwise requires:

5 (1) Person means any individual, corporation, company,
6 association, firm, partnership, limited liability company, society,
7 or joint-stock company;

8 (2) Business enterprise means any corporation,
9 partnership, limited liability company, company, or joint-stock
10 company;

11 (3) Explosive materials means explosives, blasting
12 agents, and detonators;

13 (4) Explosives means any chemical compound, mixture, or
14 device, the primary or common purpose of which is to function by
15 explosion, including, but not limited to, dynamite and other high
16 explosives, black powder, pellet powder, initiating explosives,
17 detonators, safety fuses, squibs, detonating cord, ignited cord,
18 igniters, display fireworks as defined in section 28-1241, and
19 firecrackers or devices containing more than one hundred thirty
20 milligrams of explosive composition, but does not include ~~common~~
21 consumer fireworks as defined in such section, gasoline, kerosene,
22 naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed
23 ammunition and primers for small arms, safety fuses, or matches;

24 (5) Blasting agent means any material or mixture,
25 intended for blasting which meets the requirements of 49 C.F.R.

1 part 173, subpart C, Definitions, Classification and Packaging for
2 Class I, as such subpart existed on ~~March 7, 2006,~~ January 1, 2010;

3 (6) Detonator means any device containing an initiating
4 or primary explosive that is used for initiating detonation.
5 Excluding ignition or delay charges, a detonator shall not contain
6 more than ten grams of explosive material per unit. Detonator
7 includes an electric detonator of instantaneous or delay type,
8 a detonator for use with safety fuses, a detonating cord delay
9 connector, and a nonelectric detonator of instantaneous or delay
10 type which consists of detonating cord, shock tube, or any other
11 replacement for electric leg wires;

12 (7) (a) Destructive devices means:

13 (i) Any explosive, incendiary, chemical or biological
14 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a
15 propellant charge of more than four ounces, (D) missile having an
16 explosive or incendiary charge of more than one-quarter ounce, (E)
17 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)
18 vessel or container intentionally caused to rupture or mechanically
19 explode by expanding pressure from any gas, acid, dry ice, or other
20 chemical mixture, or (J) any similar device, the primary or common
21 purpose of which is to explode and to be used as a weapon against
22 any person or property; or

23 (ii) Any combination of parts either designed or intended
24 for use in converting any device into a destructive device as
25 defined in subdivision (7) (a) (i) of this section from which a

1 destructive device may be readily assembled.

2 (b) The term destructive device does not include (i) any
3 device which is neither designed nor redesigned for use as a weapon
4 to be used against person or property, (ii) any device, although
5 originally designed for use as a weapon, which is redesigned for
6 use as a signaling, pyrotechnic, line-throwing, safety, or similar
7 device, (iii) surplus ordnance sold, loaned, or given by the
8 Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686,
9 as such sections existed on March 7, 2006, (iv) any other device
10 which the Nebraska State Patrol finds is not likely to be used
11 as a weapon or is an antique, or (v) any other device possessed
12 under circumstances negating an intent that the device be used as a
13 weapon against any person or property;

14 (8) Federal permittee means any lawful user of explosive
15 materials who has obtained a federal user permit under 18 U.S.C.
16 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,
17 2010;

18 (9) Federal licensee means any importer, manufacturer,
19 or dealer in explosive materials who has obtained a federal
20 importers', manufacturers', or dealers' license under 18 U.S.C.
21 chapter 40, as such chapter existed on ~~March 7, 2006~~, January 1,
22 2010; and

23 (10) Smokeless propellants means solid propellants
24 commonly called smokeless powders in the trade and used in small
25 arms ammunition.

1 Sec. 2. Section 28-1239.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1239.01 (1) No person shall conduct a public
4 exhibition or display of display fireworks without first procuring
5 a display permit from the State Fire Marshal. If the applicant is
6 an individual, the application for a display permit shall include
7 the applicant's social security number. Such application for a
8 display permit shall be accompanied by a fee of ~~ten~~ twenty-five
9 dollars to be deposited in the State Fire Marshal Cash Fund.
10 Applications shall be received no later than ten business days
11 prior to the date of the display. The application fee for a late
12 application shall be double what the application fee would have
13 been had the application not been late.

14 (2) No display fireworks shall be sold or delivered by
15 a licensed distributor to any person who is not in possession of
16 an approved display permit. Sales of display fireworks to persons
17 without an approved display permit shall be subject to sections
18 28-1213 to 28-1239.

19 Sec. 3. Section 28-1241, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1241 As used in sections 28-1239.01 and 28-1241 to
22 28-1252, unless the context otherwise requires:

23 (1) Distributor means any person engaged in the business
24 of making sales of fireworks at wholesale in this state to any
25 person engaged in the business of making sales of fireworks either

1 as a jobber or as a retailer or both;

2 (2) Jobber means any person engaged in the business of
3 making sales of fireworks at wholesale to any other person engaged
4 in the business of making sales at retail;

5 (3) Retailer means any person engaged in the business of
6 making sales of fireworks at retail to consumers or to persons
7 other than distributors or jobbers;

8 (4) Sale includes barter, exchange, or gift or offer
9 therefor and each such transaction made by any person, whether as
10 principal, proprietor, agent, servant, or employee;

11 (5) Fireworks means any composition or device designed
12 for the purpose of producing a visible or audible effect by
13 combustion, deflagration, or detonation and which meets the
14 definition of ~~common~~ consumer or special fireworks set forth by the
15 United States Department of Transportation in Title 49 of the Code
16 of Federal Regulations;

17 (6) ~~Common~~ Consumer fireworks means any ~~small~~ firework
18 device designed to produce visible or audible effects by
19 combustion, deflagration, or detonation and which is required to
20 comply with the construction, chemical composition, and labeling
21 regulations of the United States Consumer Product Safety Commission
22 set forth in 16 C.F.R. ~~small devices designed to produce audible~~
23 ~~effects such as whistling devices, ground devices containing fifty~~
24 ~~milligrams or less of explosive composition, and aerial devices~~
25 ~~and firecrackers containing one hundred thirty milligrams or less~~

1 ~~of explosive composition. Class C explosives as classified by the~~
2 ~~United States Department of Transportation shall be considered~~
3 ~~common fireworks, parts 1500, hazardous substances and articles;~~
4 ~~administration and enforcement regulations, and 1507, fireworks~~
5 ~~devices, as the parts existed on January 1, 2010. Consumer~~
6 ~~fireworks also include fireworks classified as UNO336 and UNO337 or~~
7 ~~1.4G by the United States Department of Transportation, 49 C.F.R.~~
8 ~~172.101, as such regulation existed on January 1, 2010;~~

9 (7) Permissible consumer fireworks means ~~only sparklers,~~
10 ~~vesuvius fountains, spray fountains, torches, color fire cones,~~
11 ~~star and comet type color aerial shells without explosive charge~~
12 ~~for the purpose of making a noise, lady fingers, not to exceed~~
13 ~~seven-eighths of an inch in length or one-eighth inch in diameter,~~
14 ~~total explosive composition not to exceed fifty milligrams in~~
15 ~~weight, color wheels, and any other fireworks approved under~~
16 ~~section 28-1247 all items permissible to be manufactured in the~~
17 ~~United States or imported into the United States and which meet~~
18 ~~the following criteria: (a) Are permissible by the United States~~
19 ~~Consumer Product Safety Commission; (b) have been tested and~~
20 ~~approved by a recognized testing facility; or (c) in the case of~~
21 ~~those products manufactured or assembled in the State of Nebraska,~~
22 ~~approved if tested and approved by the State Fire Marshal under~~
23 ~~section 28-1247. Permissible consumer fireworks does not include:~~
24 ~~(i) Rockets which have a stick or wire externally attached; (ii)~~
25 ~~wire sparklers; (iii) night time parachutes; (iv) lantern type or~~

1 other similar types that carry flames into the air for propulsion;
2 (v) fireworks that are shot into the air and after coming to the
3 ground cause automatic ignition due to sufficient temperature; (vi)
4 firecrackers that contain more than fifty milligrams of explosive
5 composition; and (vii) fireworks that the State Fire Marshal has
6 tested and deemed to be unsafe under section 28-1247; and

7 (8) Display fireworks means those materials manufactured
8 exclusively for use in public exhibitions or displays of fireworks
9 designed to produce visible or audible effects by combustion,
10 deflagration, or detonation. Display fireworks includes, but is not
11 limited to, firecrackers containing more than one hundred thirty
12 milligrams of explosive composition, aerial shells containing more
13 than forty grams of explosive composition, and other display pieces
14 which exceed the limits for classification as ~~common~~ consumer
15 fireworks. Class B, also known as 1.3G, explosives as classified
16 by the United States Department of Transportation, 49 C.F.R.
17 172.101, as such regulation existed on January 1, 2010, shall be
18 considered display fireworks. Display fireworks shall be considered
19 an explosive as defined in section 28-1213 and shall be subject to
20 sections 28-1213 to 28-1239, except that display fireworks may be
21 purchased, received, and discharged by the holder of an approved
22 display permit issued pursuant to section 28-1239.01.

23 Sec. 4. Section 28-1244, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 28-1244 Except as provided in section 28-1245, it shall

1 be unlawful for any person to possess, sell, offer for sale, bring
2 into this state, or discharge any fireworks other than permissible
3 consumer fireworks.

4 Sec. 5. Section 28-1246, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1246 (1) It shall be unlawful for any person to
7 sell, hold for sale, or offer for sale as a distributor, jobber,
8 or retailer any fireworks in this state unless such person has
9 first obtained a license as a distributor, jobber, or retailer.
10 Application for each such license shall be made to the State
11 Fire Marshal on forms prescribed by him or her. If the applicant
12 is an individual, each application shall include the applicant's
13 social security number. Each application shall be accompanied by
14 the required fee, which shall be ~~five hundred~~ seven hundred fifty
15 dollars for a distributor's license, ~~two~~ four hundred dollars
16 for a jobber's license, and ~~twenty-five~~ thirty-five dollars for
17 a retailer's license for the period between June 24 and July 5
18 of each year, and fifteen dollars for a retailer's license for
19 the period between December 28 and January 1 of each year. Each
20 application for a license as a retailer postmarked after June
21 ~~10 shall be accompanied by an additional fee of fifty dollars.~~
22 Applications shall be received no later than twenty business days
23 prior to the date of the first sale. The application fee for a late
24 application shall be double what the application fee would have
25 been had the application not been late. All licenses shall be good

1 only for the calendar year in which issued and shall at all times
2 be displayed at the place of business of the holder thereof.

3 (2) The funds received pursuant to this section shall
4 be remitted to the State Treasurer for credit to the State Fire
5 Marshal Cash Fund.

6 Sec. 6. Section 28-1247, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1247 Before any permissible fireworks may be sold,
9 held for sale, or offered for sale in this state, they shall
10 first be submitted to the State Fire Marshal for examination to
11 determine their compliance with subdivision (7) of section 28-1241
12 and their safety for general use. Fireworks not specifically listed
13 in subdivision (7) of section 28-1241 may be added to the list
14 of permissible fireworks by the State Fire Marshal, by rule or
15 regulation, after having been submitted to him or her and tested to
16 determine their safety for general use.

17 Single items may be disallowed by the State Fire Marshal
18 if it can be shown that they pose a severe threat to cause bodily
19 injury or property damage. Such action to disallow may be taken
20 by the State Fire Marshal after twenty samples of an item in
21 question have been tested and at least ten percent have been found
22 to be unsafe. The State Fair Marshal shall allow viewing of the
23 testing of questionable items by suppliers of such items or their
24 representatives. Action to disallow may then be taken after a
25 hearing is held according to the Administrative Procedure Act.

1 Sec. 7. Section 28-1249, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1249 (1) It shall be unlawful to sell any permissible
4 consumer fireworks at retail within this state, outside the limits
5 of any incorporated city or village. Permissible consumer fireworks
6 may be sold at retail only between June 24 and July 5 and between
7 December 28 and January 1 of each year.

8 (2) During the period in which permissible consumer
9 fireworks are not allowed to be purchased, a permit to purchase
10 permissible consumer fireworks from a licensed Nebraska distributor
11 or jobber may be obtained by a person with a display permit from
12 the State Fire Marshal. The permit shall be obtained from the
13 State Fire Marshal for a fee of twenty-five dollars. The permit
14 will allow the holder to purchase the necessary inventory for
15 a single display from a distributor or jobber and to conduct a
16 permissible consumer fireworks display or demonstration. Such a
17 display or demonstration shall consist of shooting, either manually
18 or electronically, a variety of ground and aerial fireworks. Such a
19 display may be for a private or public event and shall be subject
20 to any local ordinances or resolutions.

21 Sec. 8. Section 28-1250, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 28-1250 (1) Any person who violates any of the provisions
24 of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If
25 such person is a licensed distributor or jobber he or she shall be

1 subject to the revocation of his or her license for a period of ~~one~~
2 year, up to three years.

3 (2) It shall be unlawful for any person, association,
4 partnership, limited liability company, or corporation to have in
5 his, her, or its possession any fireworks in violation of any of
6 the provisions of such sections. If any person shall have in his,
7 her, or its possession any fireworks in violation of such sections,
8 a warrant may be issued for the seizure of such fireworks and when
9 the warrant is executed by the seizure of such fireworks, such
10 fireworks shall be safely kept by the magistrate to be used as
11 evidence. Upon conviction of the offender, the fireworks shall be
12 destroyed, but if the offender is discharged, the fireworks shall
13 be returned to the person in whose possession they were found.
14 Nothing in such sections shall apply to the transportation of
15 fireworks by regulated carriers.

16 Sec. 9. Original sections 28-1213, 28-1239.01, 28-1241,
17 28-1244, 28-1246, 28-1247, 28-1249, and 28-1250, Reissue Revised
18 Statutes of Nebraska, are repealed.